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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Duane Bryan Heward, *et al.*,

Plaintiffs,

v.

Ahmed Thahab,

Defendant.

No. CV 19-5155-PHX-DJH

**PLAINTIFFS' MOTION FOR
AWARD OF ATTORNEY'S FEES**

I. Introduction.

Plaintiffs, Duane Bryan Heward and Alysia Dawn Heward (hereafter "Hewards" or "Plaintiffs"), by and through counsel, respectfully move for an award of reasonable attorney's fees in the amount of \$21,422.50, representing 45.1 hours of attorney time at \$475 per hour, which were necessarily incurred in the prosecution of this case. Plaintiffs' Motion is supported by the following Memorandum of Points and Authorities, the Declaration of Floyd W. Bybee (Exhibit 1); the Declaration of Richard N. Groves (Exhibit 2); a Statement of Consultation as required by Local Rule 54.2(d)(1) (Exhibit 3); and copy of the fee agreement between Plaintiffs and counsel (Exhibit 4).

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR ATTORNEY'S FEES

II. Local Rule 54.2 Factors.

(1) Eligibility.

On September 12, 2019 Plaintiffs filed this suit against Defendant Ahmed Thahab (hereafter “Thahab” or “Defendant”) alleging violations of the federal Motor Vehicle Information and Costs Savings Act, also known as the federal Odometer Act, 49 U.S.C. § 32701, et seq. (hereinafter “Odometer Act” or “Act”), and the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.* (hereinafter “ACFA”). The claims arose from Defendant’s sale of a used 2014 Chrysler Van to Plaintiffs with the representation that the Van had only 75,000 or 80,000 miles, when in fact Defendant had purchased the Van with over 206,000 miles recorded on the title. After unsuccessful efforts to settle, the matter was tried to the Court on April 12, 2021. After taking the matter under advisement, on May 14, 2021, the Court issued an Order outlining its findings of fact, and conclusions of law, ultimately finding in favor of Plaintiffs and against Defendant. (Dkt. #38) The Court awarded Plaintiffs damages of \$19,595.58, and a judgment was entered accordingly. (Dkt. #39)

Plaintiffs succeeded and prevailed on all claims against Defendant, and were awarded actual damages, statutory damages under the Odometer Act, and punitive damages under the ACFA. In the Order, the Court also directed Plaintiffs counsel to file the present motion for attorney’s fees and costs.

(2) Entitlement.

The Odometer Act specifies that “[t]he court shall award costs and

1 a reasonable attorney's fee to the person when a judgment is entered for
2 that person." 49 U.S.C. § 32710(b). The award of attorney's fees to a
3 successful plaintiff is mandatory under the Act. *See Duval v. Midwest*
4 *Auto City Inc.*, 578 F.2d 721 (8th Cir. 1978); *Hall v. Riverside Lincoln*
5 *Mercury-Sales*, 499 N.E.2d 156, 161 (Ill. App. Ct. 1986 (mandatory
6 attorney's fees a necessary part of the Federal Act). The Act does not
7 specify what "reasonable" means, however, it is likely that courts will
8 turn to other federal fee-shifting standards announced in cases under
9 other consumer statutes or civil rights cases.

10 The Odometer Act's legislative history implies that judges should
11 adequately compensate attorneys so that they will litigate odometer
12 cases and help promote the Act's consumer protection purposes. The
13 prosecution of an odometer violation can be very difficult, nearly always
14 involving proof of the defendant's intent. Moreover, private attorneys
15 may be skeptical of these cases because an award which would ade-
16 quately compensate an attorney for her services might greatly exceed
17 the average damage recovery for the violation. *See Farmers Coop. Co. v.*
18 *Senske & Son Transfer Co.*, 572 F.3d 492 (8th Cir. 2009) (over \$100,000
19 in attorney fees, including a 10% upwards adjustment on the lodestar,
20 when actual damages were a little over \$42,000); *Fleet Inv. Co. v. Rogers*,
21 620 F.2d 792 (10th Cir. 1980); *Evans v. Paradise Motors, Inc.*, 788 F.
22 Supp. 1079 (N.D. Cal. 1991); *Williams v. Fin. Plaza, Inc.*, 2002 Mo. App.
23 LEXIS 883 (Mo. Ct. App. Apr. 30, 2002).

1 In calling for a national policy against odometer tampering,¹
 2 Congress clearly articulated its intent to encourage attorneys to prose-
 3 cute these cases by providing reasonable attorney fees for successful
 4 actions, even if the actual damage recovery is relatively small. See
 5 *McGinty v. Beranger Volkswagen, Inc.*, 633 F.2d 226 (1st Cir. 1980)
 6 (\$3,000 attorney fee award vacated for determination why \$17,000
 7 request was rejected); *Fleet Inv. Co. v. Rogers, supra*; *Duval v. Midwest*
 8 *Auto City, Inc., Supra*; *Evans v. Paradise Motors, Inc., supra*; *Gonzales v.*
 9 *Van's Chevrolet, Inc.*, 498 F. Supp. 1102 (D. Del. 1980) (\$9,000 attorney
 10 fee).

11 “The value of an attorney’s services is not only measured by the
 12 amount of the recovery to the plaintiff, but also the non-monetary
 13 benefit accruing to others, in this case the public at large from his
 14 successful vindication of a national policy to protect consumers from
 15 fraud in the used car business.” *Fleet Inv. Co. v. Rogers, supra*.

16 Thus, as a result of Plaintiffs’ completely successful action under
 17 the federal Odometer Act, Plaintiffs are entitled to an award of reason-
 18 able attorney's fees for the time necessarily and reasonably expended.

19 **(3) Reasonableness of Requested Award.**

20 Plaintiffs seek an award of attorney’s fees in the amount of
 21 \$21,422.50, representing 45.1 hours of attorney time at \$475 per hour.
 22 As set forth herein, and in counsel’s declaration, paragraphs 7 - 11, the

23
 24 ¹ The Senate Report states: “Finally, there is a need to adopt a
 25 national policy against odometer tampering. Some 17 states presently
 26 have legislation prohibiting persons from tampering with odometers. A
 national policy against such practices is needed.” S. Rep. No. 92-413
 (1971), reprinted in 1972 U.S.C.C.A.N. 3960, 3964.

1 amount of fees requested are reasonable and were necessarily incurred
2 in the prosecution of this case.

3 ***(A) Time and labor required of counsel.***

4 An odometer fraud case is unique and unlike the typical personal
5 injury case. The Act requires plaintiffs to not only show a violation of
6 prohibited conduct, but also requires plaintiffs to prove the defendant's
7 fraudulent intent. 49 U.S.C. §§ 32710(a), 32709(d)(1)(B). *See also Hill v.*
8 *Bergeron Plymouth Chrysler*, 456 F. Supp. 417 (E.D. La. 1978). In
9 addition, because defendants in these actions have committed some
10 level of fraud, they also tend to hide and conceal evidence of their
11 actions which then have to be uncovered by plaintiff and counsel in
12 order to prevail in the case. Defendants refuse to produce any documen-
13 tation which might show liability, and they almost always hide their
14 fraudulent acts claiming innocence. Plaintiffs and counsel are thus
15 required to uncover supporting documents and other proof which
16 necessarily come from third parties in order to support their claims and
17 the intent to defraud.

18 In the present case, Defendant allowed the case to progress to trial
19 all the while continuing to deny any liability, and making claims of
20 ignorance and innocence for his actions. Settlement was continually
21 broached by Plaintiffs throughout the litigation, but Defendant simply
22 denied any liability and would not offer anything. The parties even
23 participated in a settlement conference with Magistrate Judge Bibles.
24 However, the conference was cut short, when caucusing with Defendant,
25 Defendant told Judge Bibles that was going to hire counsel. He never
26 hired counsel.

1 During the litigation, Defendant provided no documentation or
2 evidence related to his acquisition of the subject vehicle, or the sale of
3 the vehicle to Plaintiffs. Moreover, Defendant provided no documenta-
4 tion or evidence to support his claimed defenses.

5 Plaintiffs submit that the time expended in the prosecution of this
6 action is modest due to counsel's experience in odometer fraud litiga-
7 tion, and in spite of the obstinate position taken by Defendant. Cases
8 such as this, in which monetary damages are relatively small, still assist
9 other consumers because the parties involved in the sale of automobiles
10 are motivated to change their practices and procedures to assure
11 compliance with the Odometer Act. Defendant should not be encouraged
12 to cause Plaintiffs or others to unnecessarily expend resources by
13 escaping liability for fees and costs associated with the prosecution of
14 this case.

15 ***(B) Novelty and difficulty of the questions presented.***

16 As outlined above, Odometer Fraud cases are unique and require
17 a continual effort by counsel to discover and uncover documentation
18 and facts in order to support not only proof of the violation, but that the
19 violation was committed by Defendant with the intent to defraud Plain-
20 tiffs. Most lawyers choose not to take on the task of learning the statute
21 and the case law, and risk proof of a violation but without the necessary
22 element of intent to defraud. The Odometer Act is not a strict liability
23 statute, or even one where the proof is simply negligence. The require-
24 ment to prove intent to defraud makes these cases much more difficult
25 to reach a successful conclusion.

1 ***(C) Skill requisite to perform the legal service properly.***

2 Because Odometer Fraud cases are frequently against small
3 dealerships, or individuals selling dozens of cars off the on-line ads, the
4 documentation normally found in a large established dealership is not
5 available. A lawyer handling these cases must know how and where to
6 find the documentation to support the violation, and to prove the ele-
7 ment of an intent to defraud. Thus, there is a skill and a specific level of
8 commitment that is required to perform the legal service in these cases.

9 ***(D) Preclusion of other employment by counsel.***

10 The time spent on this case was not, and could not be, spent at
11 the same time on any other case. Counsel purposefully limits his prac-
12 tice to consumer law in order to help ordinary individuals who need the
13 remedies of the Act as provided by Congress.

14 ***(E) Customary fee charged in matters of the type involved.***

15 The customary fee charged in matters of this type is in line with
16 Plaintiffs' requested rate. The declaration of practicing Arizona con-
17 sumer attorney Richard Groves confirms that Plaintiffs' rate of \$475 per
18 hour is a reasonable rate regularly charged in this District for consumer
19 protection litigation for an attorney of Plaintiffs' counsel experience.

20 As set forth in counsel's declaration, contemporaneously filed
21 herewith, hourly rates between \$400 and \$425 per hour have been
22 approved by judges in this District for counsel's work, going back to
23 early 2017. See ¶ 4; Decl. of Bybee. In June 2019, Plaintiffs' counsel
24 modestly increased his hourly rate to \$475 per hour for new consumer
25 protection litigation matters such as odometer fraud.

26 Counsel has completely focused his practice since 1994 on pursu-

ing consumer protection claims on behalf of Arizona consumers. Pursuant to a Report and Recommendation issued by Magistrate Judge Deborah M. Fine, the Honorable G. Murray Snow entered an order on April 26, 2017 awarding counsel attorney's fees at the rate of \$400 per hour in the odometer fraud case of *Baeza v. Compadres Auto Sales, LLC*, CV16-1903-PHX-DMF. Sixteen months later, in August 2018, the Honorable John J. Tuchi awarded counsel attorney's fees as requested at the hourly rate \$425 in the odometer fraud case of *Thompson v. Qal Dalmi Auto Sale LLC, et al.*, CV18-0478-PHX-JJT (Aug. 1, 2018) The same month, the Honorable Susan R. Bolton also awarded Plaintiffs' counsel full attorney's fees at the requested hourly rate of \$425 in the odometer fraud case of *Aguayo v. Transtyle, Inc., et al.*, CV 18-1174-PHX-SRB (Aug. 29, 2018). The Honorable David G. Campbell awarded counsel all attorney's fees requested at the rate of \$425 per hour in October 2018 in the odometer fraud case of *King v. Union Leasing, Inc., et al.*, CV17-3281-PHX-DGC. Judge Dominic W. Lanza found counsel's requested hourly rate of \$425 to be reasonable and awarded full attorney's fees in the odometer act case of *Braunlich v. Arizona Road Trip Auto LLC, et al.* CV 19-5906-PHX-DWL (August 21, 2020). And, most recently, in March 2021, the Honorable Stephen M. McNamee awarded counsel his full attorney's fees as requested at the hourly rate of \$425 per hour in the odometer fraud case of *Elasfia v. Lara, et al.*, CV20-1666-PHX-SMM-CDB, March 3, 2021)

(F) Whether the fee is fixed or contingent.

In Consumer Credit Protection Act cases, the attorney's fee is nearly always contingent – not based on the amount of damages, but on

1 receiving an award by the court or by agreement of opponent. In these
 2 private attorney general cases, Congress has repeatedly encouraged
 3 counsel to bring suit, recognizing that counsel cannot charge the client
 4 an hourly fee, because the fee may be out of proportion to the recovery,
 5 or out of reach of the consumer's ability to pay.

6 "A contingent fee must be higher than the fee for the same legal
 7 services as they are performed. The contingent fee compensates the
 8 lawyer not only for the legal services he renders, but also for the loan of
 9 those services. The implicit interest rate on such a loan is higher be-
 10 cause the risk of default (the loss of the case, which cancels the debt of
 11 the client to the lawyer) is much higher than that of a conventional
 12 loan." Posner, Economic Analysis of Law, 534, 567 (4th ed. 1992).

13 If contingent, the fee award should compensate counsel for the
 14 risk of receiving no compensation, *Blum v. Stenson*, 465 U.S. 886, 903
 15 (1983), and to permit counsel "to earn an income that would be competi-
 16 tive with colleagues who get paid win or lose." *Bayless v. Irv Leopold*
 17 *Imports, Inc.*, 659 F. Supp. 942 (D.Or. 1987) (odometer case).

18 ***(G) Time limitations imposed by the client or the***
 19 ***circumstances.***

20 None.

21 ***(H) Amount of money, or value of the rights involved, and***
 22 ***results obtained.***

23 "[C]ourts generally will not look to the size of the damage award in
 24 determining a reasonable attorney's fee in consumer cases." *Smith v.*
 25 *Chapman*, 436 F. Supp. 58, 66 (W.D. Tex. 1977). However, the results in
 26 this case are significant for these Plaintiffs. Plaintiffs received a total

1 damage award of \$19,595.58, including actual damages and punitive
2 damages under the Odometer Act, and the ACFA.

3 The courts have regularly rejected the “proportionality” argument
4 as the basis for a fee award. *See Lunday v. City of Albany*, 42 F.3d 131,
5 134 (2d Cir. 1994); *DiFilippo*, 759 F.2d 231, 234 (2nd Cir. 1985). Indeed,
6 fee awards in civil rights and consumer protection matters regularly
7 exceed the plaintiffs’ recovery. *See City of Riverside v. Rivera*, 477 U.S.
8 561, 580 (1986) (awarding \$245,450 fees on a \$33,350 recovery, includ-
9 ing 143 hours for trial preparation); *Grant v. Martinez*, 973 F.2d 96, 101
10 (2d Cir. 1992) (fee award of \$500,000 on \$60,000 settlement); *United*
11 *States Football League v. National Football League*, 887 F.2d 408, 413-15
12 (2d Cir. 1989) (\$5.5 million fee award on \$3.00 recovery); *Chambless v.*
13 *Masters, Mates & Pilots Pension Plan*, 885 F.2d 1053, 1057-60 (2nd Cir.
14 1989) (\$415,000 fee for recovering \$2,689.02 monthly pension). “[F]or
15 Congress’s private attorney general approach to succeed in the context
16 of [consumer protection] cases, attorney fees must not hinge on a
17 percentage of actual damages awarded.” *St. Bernard v. State Collection*
18 *Service, Inc.*, 2010 WL 2743327 p. 2 (D.Ariz.); *see also Camacho v.*
19 *Bridgeport Fin.*, 523 F.3d 973, 981 (9th Cir.2008); and *Reck v. FCA US*
20 *LLC*, 2021 Cal. App. LEXIS 438, 18-19; 2021 WL 2070540 (Cal. Appl.
21 May 24, 2021) (it is an error of law for the trial court to reduce or deny
22 an award of attorney fees in a civil rights or public interest case on the
23 basis of a plaintiff’s rejection of an offer of judgment when the ultimate
24 recovery has exceeded the rejected offer.)

25 **(I) Experience, reputation and ability of counsel.**

26 Submitted herewith are the declarations of Plaintiffs’ counsel, and

1 of one other Arizona consumer lawyer concerning counsel's experience,
2 abilities, and the reasonableness of his rate. In short, Mr. Bybee has
3 been in practice for over 31 years, has limited his practice to consumer
4 protection matters, including taking on many difficult cases against the
5 most experienced and capable attorneys.

6 ***(J) "Undesirability" of the case.***

7 Consumer protection cases, including Odometer Act claims, are
8 brought in the public interest by private attorneys general, but are
9 particularly undesirable to lawyers for many reasons. First, they are
10 often labor-intensive to obtain the requisite proof to win the case. The
11 results are uncertain so taking such cases imposes risks upon the
12 practitioner. It becomes difficult for consumers to vindicate their rights
13 under consumer protection statutes especially where smaller amounts
14 of money are involved.

15 Counsel's compensation is both contingent upon success of the
16 action, and is deferred until after the end of the case – when (and if) it is
17 collected from the defendant. For these reasons, consumer protection
18 cases are not, for the most part, attractive cases to most legal practitio-
19 ners. The vast majority of attorneys simply will not take these cases.

20 ***(K) Nature and Professional relationship with Client.***

21 Often, where an attorney has a lengthy and repeated professional
22 relationship with a client, the client negotiates a "volume discount" for
23 legal services. Not so here. This is the first and only matter for which
24 Plaintiffs have hired counsel. In nearly all consumer protection cases,
25 consumer Plaintiffs are not "repeat" or "volume" clients, as representa-
26 tion is limited to consumer protection claims only.

1 **(L) Awards in similar actions.**

2 Between 2017 and 2021, counsel has received attorney's fee
3 awards in the District of Arizona ranging from \$400 per hour, to \$425
4 per hour. In this case, counsel is requesting attorney's fees at the rate of
5 \$475 per hour. This has been counsel's standard hourly rate for con-
6 sumer protection litigation with new cases starting in June 2019.

7 In April 2017, the Honorable G. Murray Snow confirmed two
8 Reports and Recommendations orders awarding counsel attorney's fees
9 at the rate of \$400 per hour in the cases of *Burr v. National Credit*
10 *Adjusters LLC*, CV16-1139-PHX-DKD (FDCPA matter May 1, 2017)
11 (report and recommendation issued by Magistrate Judge David K.
12 Duncan), and *Baeza v. Compadres Auto Sales, LLC*, CV16-1903-PHX-
13 DMF (Odometer Fraud matter, April 26, 2017) (report and recommenda-
14 tion issued by Magistrate Judge Deborah M. Fine).

15 In November 2017, the Honorable John J. Tuchi found the hourly
16 rate of \$400 per hour was 'representative of the Phoenix market in the
17 FDCPA practice' in the case of *Vargas v. National Credit Systems Incorpo-*
18 *rated*, CV-17-00415-PHX-JJT (FDCPA matter, November 8, 2017).

19 In August 2018, the Honorable John J. Tuchi again awarded all
20 attorney's fees at the requested of \$425 per hour in the odometer fraud
21 case of *Thompson v. Qal Dalmi Auto Sale LLC, et al.*, CV18-0478-PHX-JJT
22 (Aug. 1, 2018)

23 In August 2018, the Honorable Susan R. Bolton awarded plaintiff's
24 full attorney's fees at the requested hourly rate of \$425 in the odometer
25 fraud case of *Aguayo v. Transtyle, Inc., et al.*, CV 18-1174-PHX-SRB
26 (Aug. 29, 2018).

1 In October 2018, the Honorable David G. Campbell awarded all
 2 attorney's fees requested at the rate of \$425 per hour (Dkt. #91) in the
 3 odometer fraud case of *King v. Union Leasing, Inc., et al.*, CV17-3281-
 4 PHX-DGC.

5 In August 2020, in the federal odometer act case of *Braunlich v.*
 6 *Arizona Road Trip Auto LLC, et al.*, the Honorable Dominic W. Lanza
 7 found counsel's requested hourly rate of \$425 to be reasonable and
 8 awarded full attorney's fees. (CV 19-5906-PHX-DWL, August 21, 2020)

9 In March 2021, the Honorable Stephen M. McNamee awarded full
 10 attorney's fees requested at the hourly rate of \$425 per hour (Dkt. #33)
 11 in the odometer fraud case of *Elasfia v. Lara, et al.*, CV20-1666-PHX-
 12 SMM-CDB, March 3, 2021)

13 ***(M) Other matters deemed appropriate under the***
 14 ***circumstances.***

15 Congress enacted fee-shifting statutes to compen-
 16 sate "private attorneys general" and thereby to
 17 encourage private enforcement of civil rights stat-
 18 utes, to the benefit of the public as a whole. See
 19 H.R. Rep. No. 94-1558, at 2 (1976) (citing *Newm-*
 20 *an v. Piggie Park Enters., Inc.*, 390 U.S. 400, 402,
 21 19 L. Ed. 2d 1263, 88 S. Ct. 964 (1968) (per
 22 curiam)); see generally S. Rep. No. 94-1011
 23 (1976). The public interest in private civil rights
 24 enforcement is not limited to those cases that
 25 push the legal envelope; it is perhaps most mean-
 26 ingfully served by the day-to-day private enforce-
 ment of these rights, which secures compliance
 and deters future violations. Congress meant
 reasonable attorney's fees to be available to the
 private attorneys general who enforce the law, see
 generally S. Rep. No. 94-1011, not only to those
 whose cases make new law.

25 *Quarantino v. Tiffany & Co.*, 166 F.3d 422, 426 (2d Cir. 1999).

26 Attorney's fees are central to the enforcement of these consumer

1 protection statutes by private attorneys general. “The value of an attorney’s services is not only measured by the amount of the recovery to the
2 Plaintiffs, but also the non-monetary benefit accruing to others, in this
3 case the public at large from this successful vindication of a national
4 policy to protect consumers from odometer fraud.” See *Tolentino*, 46
5 F.3d at 652 (Plaintiffs “seek[] to vindicate important ... rights that
6 cannot be valued solely in monetary terms ... and congress has deter-
7 mined that the public as a whole has an interest in the vindication of
8 statutory rights.” Quoting *City of Riverside v. Rivera*, 477 U.S. 561, 106
9 S.Ct. 2686, 91 L.Ed.2d 466 (1986)).

11 Such fees are particularly important in consumer cases under the
12 principles discussed by the Supreme Court in *City of Riverside v. Rivera*,
13 *supra*, a civil rights case. Consumer protection cases also support this
14 proposition. See, e.g., *Ratner v. Chemical Bank*, 54 F.R.D. 412 (S.D.N.Y.
15 1972) (\$20,000 fees, \$100 damages).

16 A defendant should not be encouraged to litigate in the expectation
17 that the Court will reduce the Plaintiffs’ fee request, even though the
18 defendant’s fees to its own attorney are not similarly scrutinized and
19 reduced by the Court. Cf. *Eddy v. Colonial Life Ins. Co.*, 59 F.3d 201,
20 207-08 (D.C. Cir. 1995) (a fee award deters noncompliance with the law
21 and encourages settlement).

22 An inadequate award diminishes the inducement created by
23 fee-shifting statutes, and undermines the goal of promoting private
24 representation in consumer protection actions. In language which could
25 appropriately be applied to odometer fraud actions, the Second Circuit
26 noted:

A Plaintiff who is successful in establishing certain practices as violative of his constitutional rights will deter officials from continuing this conduct, and thereby help assure that others are not subjected to similar constitutional deprivations. This deterrent effect of successful §1983 actions is wholly independent of the relief which the Plaintiff seeks or is ultimately awarded, and therefore it is inappropriate to condition attorney's fee awards on the nature of the relief granted.

McCann v. Coughlin, 698 F.2d 112, 129 (2d Cir. 1983).

A fee award should be made at a rate which recognizes the vindication of public policy expressed in the Odometer Act. "The award of attorney's fees, as a practical matter, is a critical and integral part of [the creation of a system of private attorneys general]." *James v. Home Constr. Co.*, 689 F.2d 1357, 1359 (11th Cir. 1982).

III. Attorney's Fees Calculated Pursuant to the Lodestar Formula.

The Ninth Circuit has determined that District courts must calculate awards for attorney's fees using the "lodestar" method. *U.S. v. \$28,000.00 in U.S. Currency*, 802 F.3d 1100, 1106 (9th Cir. 2015). The "lodestar" figure is the number of hours reasonably expended multiplied by an allowed hourly rate. *See Hensley v. Eckerhart*, 103 S.Ct. 1933, 1939 (1983) (viewing an award of fees under 42 U.S.C. §1988). The burden is on the applicant to prove that the fee request is reasonable, with a strong presumption that the lodestar amount represents a fair and appropriate fee award.

Although *Hensley* was decided in the context of a civil rights case, the lodestar analysis is applicable to all cases involving an attorney fee shifting statute. *Hensley*, 103 S.Ct. at 1941. The Supreme Court has previously noted that, "We have stated in the past that fee shifting

statutes' similar language is 'a strong indication' that they are to be interpreted alike." *Independent Federation of Flight Attendants v. Zipes*, 491 U.S. 754, 109 S.Ct. 2732, 105 L.Ed. 2d 639 (1989) (quoting *Northcross v. Memphis Bd. Of Education*, 412 U.S. 427, 428, 93 S.Ct. 2201, 2202, 37 L.Ed.2d 48 (1973).) See also *City of Burlington v. Dague*, 112 S.Ct. 2638, 2641 (1992) (clean water act case applying lodestar analysis); *Simpson v. Sheahan*, 104 F.3d 998, (7th Cir. 1997) (civil rights case); *DeJesus v. Banco Popular de Puerto Rico*, 918 F.2d 232, 234 (1st Cir. 1990) (truth in lending case); *Piekarski v. Home Owners Savings Bank, F.S.B.*, 755 F. Supp. 859, 863 (D. Minn 1991) (retaliatory discharge case). The determination of the allowable hours rests with the sound discretion of the trial court. *Hensley*, 103S.Ct. at 1941. Determination of the hourly rate by the trial court should consider a rate "commensurate which [counsel] could obtain by taking other types of cases." *Id.*

IV. Conclusion.

Plaintiffs' respectfully request that the Court grant their motion and award them their reasonable and necessary attorney's fees in the amount of \$21,422.50, which represents 45.1 hours of attorney time at \$475 per hour. Counsel has exercised reasonable billing discretion in making this request and has reduced his recorded time by 9.9 hours, or 18%. The requested fees were reasonable and necessarily incurred in representing Plaintiffs in this matter.

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/ / /

RESPECTFULLY SUBMITTED May 28, 2021 .

s/ Floyd W. Bybee
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by s/ Floyd W. Bybee